

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

DAVID L. ODLE

Debtor(s).

In Proceedings
Under Chapter 11

Case No. 93-40183

OPINION

At hearing on August 20, 1996, the Court determined that the United States of America, Internal Revenue Service, had a valid priority claim for prepetition taxes and accrued interest to the date of the debtor's bankruptcy filing in the amount of \$56,294.03. The Court reserved ruling on whether the United States was entitled to postpetition interest on its claim and directed the parties to file briefs on this issue. The United States filed a brief supporting its position of entitlement to postpetition interest. The debtor has filed no brief in opposition.

Based on the representation of the United States, which is uncontroverted by the debtor, the Court finds that the United States' tax claim is secured by a federal tax lien to the extent of \$36,205.49. With regard to this portion of its claim, the United States is entitled to postpetition interest under 11 U.S.C. 506(b) as the holder of a nonconsensual oversecured claim.¹ See United States v. Ron Pair Enterprises, 489 U.S. 235 (1989) (holding that § 506(b) applies to nonconsensual as well as consensual liens and thus includes oversecured tax liens). The United States, therefore, should be paid the principal amount of its secured tax claim in the amount of \$36,205.49, plus interest to the date of payment.²

The remainder of the United States' claim is an unsecured tax claim entitled to priority under 11

¹Section 506(b) provides:

(b) To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim

11 U.S.C. § 506(b).

²Pursuant to a prior order of the Court, the United States is entitled to immediate payment of this sum from funds escrowed in this Court.

U.S.C. § 507 (a) (8).³ Section 1129 (a) (9) (C) provides with respect to such claims that the debtor's plan must provide that the holder

will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

11 U.S.C. § 1129 (a) (9) (C). This language has been construed as authorizing the payment of postpetition interest on a priority tax claim in order to afford the holder the "present value" of its claim. See Matter of Burgess Wholesale Mfg. Opticians, Inc., 721 F. 2d 1146, 1147 (7th Cir. 1983); see also United States v. Neal Pharmacal Co., 789 F. 2d 1283, 1285 (11th Cir. 1985); Pettibone Corp. v. United States, 151 B.R. 156, 165 (Bankr. N.D. Ill. 1992). In this case, therefore, the United States is entitled to interest on the unsecured portion of its claim throughout the payment period under the plan.⁴

For the reasons stated, the Court finds that the United States is entitled to postpetition interest on its claim for unpaid taxes. The United States is directed to compute the amount of such postpetition interest and submit this computation to both the debtor and the Court within 14 days of the date of this order. The debtor is granted 14 days following service of the United States' computation to object to the computation only, and any such objection shall be supported by a statement of the basis of the objection. In the absence of objection by the debtor, the Court will accept the computation of the United States and set the amount of its claim accordingly.

A written order on this opinion shall be entered following the submission of such computation and expiration of the objection period.⁵

³The taxes in issue are Form 941 withholding taxes entitled to priority as so-called "trust fund" taxes.

⁴While the Burgess court declined to discuss the appropriate discount or interest rate to be paid on such claims, see Burgess, 721 F.2d at 1147, later courts have found that § 1129 (a) (9) (C) requires the debtor to pay the prevailing market rate of interest to make the government whole. See Pettibone, 151 B.R. at 165; see also United States v. In re Camino Real Landscape Maintenance Contractors, Inc., 818 F.2d 1503, 1504 (9th Cir. 1987); Neal Pharmacal, 789 F.2d at 1289.

⁵The final order of the Court shall date from the entry of such order.

ENTERED: September 25, 1996

/s/ KENNETH J. MEYERS
UNITED STATES BANKRUPTCY JUDGE